

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

DETREX CORPORATION, INC.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Detrex Corporation, Inc. (hereinafter "Detrex" or "defendant") to obtain injunctive relief and civil penalties for violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the "CWA") and of the applicable federal and state laws and regulations implementing this statute.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. This Court has personal jurisdiction over the defendant, a corporation doing business in the State of Ohio, pursuant to Section 309(b) of the CWA, 33 U.S.C. 1319(b).

4. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) and (c), because the defendant is found in and transacts business in the Northern District of Ohio and because the acts or omissions that constitute the basis of this Complaint occurred within this district.

REQUIRED NOTICE

5. Notice of this action has been given to the State of Ohio as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

6. Detrex is a Michigan corporation that owns and operates a chemical manufacturing plant 1100 North State Road in Ashtabula, Ohio, at which it manufactures pharmaceutical intermediates including hydrochloric acid, pyrrole, n-methyl pyrrole and zinc dialkyldithiophosphates (ZDDP).

7. Detrex is a “person” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY/ REGULATORY BACKGROUND

8. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

9. Section 301(a) of the CWA, 33 U.S.C. § 1251(a), prohibits the discharge of “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), into the waters of the United States by any person except in accordance with certain sections of the Act, or in compliance with, inter alia, a National Pollutant Discharge Elimination (“NPDES”) permit

issued by U.S. EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Under Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator of EPA may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits, including effluent limitations, but only upon compliance with applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, or under such other conditions as the Administrator determines are necessary to carry out the provisions of the Act.

11. Effluent limitations, as defined in Section 502(11) of the Act, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges.

12. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to States that meet certain requirements.

13. The State of Ohio is authorized by the Administrator of U.S. EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for discharges into navigable waters within its jurisdiction.

14. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of CWA Section 301, 33 U.S.C. § 1311, or is in violation of any permit condition or limitation in a permit issued under Section 402, 33 U.S.C. § 1342.

15. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), U.S. EPA may commence a civil action for injunctive relief and civil penalties of up to \$25,000 per day for each violation of the CWA, including discharges of any pollutant without, or not in

compliance with the terms and conditions of, an NPDES permit. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,369, civil penalties of up to \$27,500 per day for each violation may be assessed for violations occurring from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurred after March 15, 2004.

16. Sections 309(a)(3), (b), and (d) of the CWA, 33 U.S.C. § 1319(a)(3), (b), and (d), authorize the United States to commence an action for appropriate relief, including a permanent or temporary injunction and civil penalties not to exceed \$25,000 per day for each violation, when any person is in violation of the pretreatment requirements under Section 307 of the CWA, 33 U.S.C. § 1317, including any violation of local limits established pursuant to 40 C.F.R. § 403.5(c) and federal categorical limits established pursuant to 40 C.F.R. Part 419. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,369, civil penalties of up to \$27,500 per day for each violation may be assessed for violations occurring from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurred after March 15, 2004.

GENERAL ALLEGATIONS

17. On or about October 8, 1997, the Ohio Environmental Protection Agency ("OEPA") issued NPDES Permit No. OH0001872 to Detrex. The permit became effective on November 1, 1997 and had an expiration date of March 31, 2002.

18. On or about June 24, 2002, OEPA reauthorized Detrex's NPDES Permit OH0001872, which became effective on August 1, 2002 and has an expiration date of July 31, 2007.

19. On or about February 23, 2005, Detrex's NPDES Permit was modified to revise the discharge limits for total suspended solids and mercury limits.

20. Detrex's NPDES permit authorizes the discharge of specified pollutants from outfalls located at the Ashtabula facility into Fields Brook, subject to certain limitations and conditions, including specific wastewater effluent limitations. Fields Brook eventually drains into the Ashtabula River.

21. Each of the outfalls and other locations through which Detrex discharges its wastewater to these waterways is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

22. Fields Brook and the Ashtabula River are "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. Detrex's wastewater is generated from its cooling, stripping and scrubbing operations as well as tank bottoms, floor drains, boiler blowdown and sludge dewatering. The total process wastewater flow from Detrex's Ashtabula facility is approximately 119,955 gallons per day.

24. Detrex's wastewater contains total dissolved residue, total suspended solids, copper, silver, zinc, mercury, ammonia (nitrogen), oil & grease, fecal coliform, chloroform, methylene chloride, and total residual chlorine. These substances are "pollutants" as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

FIRST CLAIM FOR RELIEF
Violation of Effluent Limits of NPDES Permit

25. The allegations set forth in paragraphs 1 through 24 above are incorporated herein by reference.

26. At all times relevant to this action, Detrex's NPDES permit established effluent

limitations, as that term is defined at Section 502(11) of the CWA, 33 U.S.C. § 1362(11), for the discharge of pollutants from Detrex's Ashtabula facility into Fields Brook and the Ashtabula River.

27. Detrex's NPDES permit provided numerical limitations governing daily maximum and 30-day average amounts of the effluent characteristics for specified pollutants, including, inter alia, total suspended solids ("TSS"), oil and grease("O&G"), pH, ammonia-nitrogen, total residual chlorine and metals such as silver, copper, mercury, zinc, carbonaceous biochemical oxygen demand, total filterable residue, fecal coliform, methylene chloride, and chloroform, to a tributary of Fields Brook, which feeds into the Ashtabula River.

28. At all times relevant to this action, Detrex's NPDES permit required Detrex to monitor its discharges of pollutants from its Ashtabula facility in order to determine compliance with the effluent limitations established in the applicable NPDES permit and to submit to OEPA monthly discharge monitoring reports ("DMRs") containing the results of the effluent monitoring.

29. On numerous occasions since July 1998, Detrex discharged pollutants into navigable waters in excess of its permit limitations set forth in NPDES permit No. OH0001872 for total dissolved residue, total suspended solids, copper, silver, zinc, mercury, ammonia (nitrogen), oil & grease, fecal coliform, chloroform, methylene chloride, and total residual chlorine, in violation of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

30. The continued violations by Detrex will result in significant environmental harm to Fields Brook and the Ashtabula River given that excessive levels of the pollutants found in Detrex's effluent are toxic to human and aquatic life.

31. Detrex has realized significant economic benefit by failing to install sufficient control equipment to bring it into compliance the effluent limitations in its NPDES permit.

32. Each day of Detrex's discharge of each pollutant in excess of the effluent limitations authorized in the NPDES constitutes a separate day of violation of that permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

33. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Detrex is liable for injunctive relief and civil penalties not to exceed \$27,500 per day for each of the violation through March 15, 2004, and up to \$32,500 per day for each violation that occurred after March 15, 2004.

34. Unless enjoined by this Court, Detrex will continue these violations of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions and limitations of its NPDES permit.

SECOND CLAIM FOR RELIEF

Failure to Comply with Monitoring and Reporting Requirements of NPDES Permit

35. The allegations set forth in Paragraphs 1 through 24 and 27 through 34 above are incorporated herein by reference.

36. Detrex's NPDES permit requires it to monitor the discharge of specified pollutants including, inter alia, total suspended solids ("TSS"), oil and grease("O&G"), pH, ammonia-nitrogen, total residual chlorine and metals such as silver, copper, mercury, zinc, carbonaceous biochemical oxygen demand, total filterable residue, fecal coliform, methylene chloride, and chloroform and to submit monthly discharge monitoring reports ("DMRs") to OEPA.

37. Since July 1998, Detrex has failed to accurately monitor and report discharges of pollutants from Outfalls 002, 601 and 602 in violation of NPDES Permit No. OH0001872.

38. Each failure by Detrex to accurately monitor and correctly report its discharges of pollutants is a violation of that permit, Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and 40 C.F.R. Part 136.

39. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Detrex is liable for injunctive relief and civil penalties not to exceed \$27,500 per day for each violation through March 15, 2004, and up to \$32,500 per day for each violation that occurred after March 15, 2004.

40. Unless enjoined by this Court, Detrex will continue these violations of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions and limitations of its NPDES permit.

RELIEF REQUESTED

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Permanently enjoin Detrex from discharging pollutants except as expressly authorized by the CWA and Defendant's NPDES permit.

B. Order Detrex to take appropriate measures to mitigate the effects of its violations of the CWA;

C. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), assess civil penalties against Detrex not to exceed \$27,500 per day for each violation of Sections 301, 309 and 402 of the Act, 33 U.S.C. §§ 1311, 1319, and 1342, and of the Defendant's NPDES;

D. Award the United States its costs and disbursements in this action; and

E. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division

Dated: October __, 2006

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CERTIFICATE OF SERVICE

Pursuant to Paragraph 36 of the proposed Consent Decree between the United States and Detrex Corporation Inc., lodged herewith on this date, I hereby certify that a copy of foregoing Complaint was served on this date by certified mail, postage pre-paid, upon:

Dated: October ____, 2006

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